

II. REMOVAL IS TIMELY

This Notice of Removal is timely, pursuant to 28 U.S.C. § 1446(b), because it is filed within 30 days of Plaintiff's service of the Summons and Original Petition on Inabata. No previous Notice of Removal has been filed or made with this Court for the relief sought herein.

III. THIS COURT HAS FEDERAL QUESTION JURISDICTION

Under 28 U.S.C. § 1441(a), "any civil action brought in a state court of which the district courts of the United States have original jurisdiction, may be removed by the defendant . . . to the district court of the United States for the district and division embracing the place where such action is pending." Federal district courts have original jurisdiction for all civil actions "arising under the Constitution, laws, or treatises of the United States." 28 U.S.C. § 1331.

This action is removable to the United States District Court for the Western District of Texas under § 1441(a) because this Court has original jurisdiction over this matter under § 1331. In its Original Petition, GESPA expressly alleges violations of § 1962(c) of the federal Racketeer Influenced and Corrupt Organizations Act, Pet. ¶¶ 85–94, which provides a private right of action in 18 U.S.C. § 1964(c). Additionally, this Court sits within the District and Division "embracing the place where such action is pending" because the State Court Action is pending in El Paso County, Texas.

IV. THE OTHER PREREQUISITES FOR REMOVAL ARE SATISFIED

Venue is proper pursuant to 28 U.S.C. § 1446(a) because the El Paso Division of the United States District Court for the Western District of Texas is the judicial district embracing the place where the State Court Action was brought and is pending.

Pursuant to 28 U.S.C. § 1446(a), with this Notice of Removal, Inabata will file copies of all process, pleadings, and orders existing on file in the State Court Action in this removed action. Copies of these documents are attached hereto as Exhibits D–AA.

Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal will be provided to Plaintiff, and a copy of the Notice of Removal will be filed with the Clerk of the 120th Judicial District Court in El Paso County, Texas.

Pursuant to 28 U.S.C. § 1446(b)(2), counsel for Inabata conferred with counsel for all Defendants regarding removal. Defendants Flextronics International USA, Inc. and Flextronics Automotive USA, LLC (collectively, “Flextronics”) consent to removal and join in this Notice. A consent form executed by Flextronics is attached as Exhibit BB.

Defendant MKG GmbH Montagebau Karl Glöbel (“MKG”) and Defendant RECOM AG (“RECOM”) have not consented to removal. However, the removal statute requires the consent only of those Defendants who have been “properly joined and served.” 28 U.S.C. § 1446(b)(2). Improper joinder exists when a plaintiff cannot establish a cause of action against a defendant in state court. *See, e.g., Smallwood v. Illinois Cent. R.R. Co.*, 385 F.3d 568, 573 (5th Cir. 2004) (en banc). And a lack of “personal jurisdiction over a defendant can show that there is no reasonable basis to predict recovery against that defendant, meeting the defendants’ burden to show improper joinder.” *Thomas v. Chevron USA Inc.*, 2015 WL 12942434, at *8 n.2 (S.D. Tex. July 29, 2015) (citing *Cooper v. McDermott Int’l, Inc.*, 62 F.3d 395 (5th Cir. 1995) (Table)).

RECOM and MKG have objected to personal jurisdiction in the State Court Action and filed special appearances, *see* Exs. R & S, and personal jurisdiction does not exist over them. Absent personal jurisdiction, GESPA cannot obtain relief from RECOM and MKG in state court. RECOM and MKG, therefore, are improperly joined in this case and their consent is not necessary to remove this matter to federal court.

V. CONCLUSION

Inabata respectfully requests that this action be removed from the 120th Judicial District Court in El Paso County, Texas, and that all future proceedings in this matter take place in the United States District Court for the Western District of Texas, El Paso Division. Inabata also respectfully requests assignment to the Court in the related closed case of *GESPA Nicaragua, S.A. v. Inabata Europe GmbH*, No. 3:17-CV-306-PRM (W.D. Tex.).

Dated: July 8, 2019

Respectfully submitted,

/s/ Justin R. Chapa

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Inabata Europe GmbH

CERTIFICATE OF CONFERENCE

Pursuant to 28 U.S.C. § 1446(b)(2)(A), I hereby certify that I conferred with counsel for Flextronics, RECOM, and MKG regarding removal. Flextronics consents to removal. MKG and RECOM have not consented to removal, but their consent is not required for removal because they are improperly joined to this action.

/s/ Justin R. Chapa

Justin R. Chapa

CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2019, a true and correct copy of the foregoing document was served upon Counsel of Record by email and Certified Mail, Return Receipt Requested, as set forth below:

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